

**OPINION**  
**46-228**

December 2, 1946 (OPINION)

TAXATION

RE: Gasoline Tax - Aviation Fuel

This office is in receipt of your letter of November 26 asking for an opinion upon the question as to whether or not the Legislature only constitutionally devise some means of taxing aviation fuel, the revenue produced therefrom to be placed in an aeronautics fund.

The first question to be considered is whether or not a statute such as the one you propose would contravene the provisions of Article 56 of the Amendments to the Constitution of the State of North Dakota. Said Article 56 provides that:

"Revenue from gasoline and other motor fuel excise and license taxation motor vehicle registration and license taxes, after deduction of cost of administration and collection authorized by legislative appropriation only, and statutory refunds, shall be appropriated and used solely for construction, reconstruction, repair and maintenance of public highways, and the payment of obligations incurred in the construction, reconstruction, repair and maintenance of public highways."

As you will note the language in the constitutional amendment quoted is rather sweeping and it would appear that it includes any tax or proceeds of any tax levied upon gasoline and other motor fuel excise and license tax. It is, of course, true that at the present time no tax is levied upon fuel used in aircraft transportation since such fuel comes within the exemptions of the statute. However, if the Legislature should enact a measure levying a tax upon fuel used in aircraft transportation, I am of the opinion that it would conflict with said Article 56. The following language is rather broad:  
"Revenue from gasoline and other motor fuel excise and license taxation, motor vehicle registration and license taxes, \* \* \*"

All aircraft is operated by gasoline motors and fuel used to operate the same is of course motor fuel and I believe would come within the language of the constitutional provision quoted.

It is, therefore, extremely doubtful that the Legislature would have power to enact a law levying a tax on motor fuel to be used for other purposes than for construction, reconstruction, repair and maintenance of public highways and the payment of obligations incurred in the construction, reconstruction, repair and maintenance of public highways.

The situation could be clarified however by a constitutional amendment specifically exempting gasoline used in aircraft transportation from the provisions of Article 56, and provided that the gasoline so exempted may be taxed for the purpose of creating an aeronautic fund.

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